

EMILY SAUPITTY,	:	Order Docketing and Dismissing
Appellant	:	Appeal as Premature
	:	
v.	:	
	:	Docket No. IBIA 94-160-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 9, 1994

Appellant Emily Saupitty seeks review of a June 28, 1994, decision issued by the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the results of a tribal election for the Apache Tribe of Oklahoma (Tribe). The Area Director's decision responded to a notice of appeal filed by the Apache Election Board. According to the decision, appellant was identified as an interested party by the Election Board, and filed an answer in that appeal. For the reasons discussed below, the Board of Indian Appeals (Board) concludes that this appeal must be dismissed as premature.

The only issue raised in appellant's notice of appeal and statement of reasons is whether the person apparently elected as tribal chairman is qualified to be an enrolled member of the Tribe. The Area Director interpreted appellant's submissions to him as questioning this person's qualification for office. 1/ In addressing this issue, the Area Director stated:

Since this arises from a separate instance which the superintendent[, Anadarko Agency, BIA,] has not responded to, it is not properly before us and will not be reviewed in the present decision. By copy of this letter, the Superintendent is directed to respond to [appellant's] letter dated August 31, 1993, and to provide this office with a copy of that response.

(Decision at unnumbered 3).

Appellant's statement of reasons indicates that she understands her concerns have been remanded to the Superintendent.

1/ Appellant included a copy of the Tribe's Constitution with her notice of appeal. For purposes of this discussion, the Board assumes that this is the Tribe's current Constitution. Although not specified in Article XIII of the Constitution, which sets forth qualifications of officers, the Board again assumes for purposes of this discussion that an individual must be an enrolled member of the Tribe in order to hold tribal office.

In order to allow for an orderly decisionmaking process, the Board does not consider issues that are still pending before an appropriate BIA official. See 25 CER 2.4(e); Weaskus v. Portland Area Director, 18 IBIA 233 (1990). Accordingly, because the Area Director remanded appellant's question to the Superintendent, who has not yet rendered a decision on it, the Board finds that appellant's appeal is premature. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CTR 4.1, this appeal from the Anadarko Area Director's June 28, 1994, decision is docketed and dismissed without prejudice as premature.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

2/ This does not constitute a finding that appellant has standing to appeal the ultimate decision on her concerns, or that the Board has jurisdiction to review that decision. In Frease v. Sacramento Area Director, 17 IBIA 250, 256 (1989), the Board stated that “[t]he Department [of the Interior] has never recognized * * * any right of an individual tribal member to bring an action based on a personal assessment of what is or is not in the tribe's best interest.” This decision was based on the Department's responsibility to refrain from interfering in intra-tribal disputes. However, in Sundberg v. Acting Sacramento Area Director, 18 IBIA 207, 210 (1990), the Board found standing when the appellant's tribal position was directly at issue. Thus, in order to maintain an appeal from recognition of the tribal election results, appellant would have to show she has standing under these standards.

Furthermore, it appears that the basis for appellant's appeal is a dispute over whether another individual is properly an enrolled member of the tribe. Enrollment is a tribal question over which the Board lacks jurisdiction. See 43 CFR 4.330(b)(1); Gould v. Bureau of Indian Affairs, 24 IBIA 54 (1993); Deardorff v. Acting Portland Area Director, 18 IBIA 411 (1990). Even if the Board had jurisdiction, there would still be a question concerning appellant's standing to dispute the enrollment of another individual.